

### **REMARKS**

In the Office Action of November 1, 2006, the Examiner correctly identifies the applicant's election of claims 1-3, 8-30, 33-35 and 40-61 for prosecution in the pending application. These claims correspond to Group A, Species I, identified by the Examiner in the Office Action of August 16, 2006. By the present response, claims 31, 32, 62 and 63 have been cancelled. However, claims 4-7 and 36-39 have only been withdrawn at the present time, since if the generic independent claims 1 and 33 are deemed allowable, non-elected claims 4-7 and 36-39 will be properly included in the application as being based upon an allowable generic claim.

In the Office Action, the Examiner rejected claims 1-3, 8-30, 33-35 and 41-61 under 35 USC §102(b) as being anticipated by the Ehlers U.S. Patent No. 5,572,438. The remaining claims 9 and 40 were rejected under 35 USC §103(a) as being unpatentable over the Ehlers '438 patent in view of Official Notice.

Reconsideration of the above claim rejections in view of the foregoing claim amendments, as well as in view of the following arguments for allowance is respectfully requested.

### **Claims 1-3, 8-30**

By the present Response, independent claim 1 has been amended to more particularly define the subject matter the applicant believes allowable over the Ehlers '438 reference cited by the Examiner. Specifically, claim 1 has been amended to more clearly define a method for providing at least one energy management program to a customer of a utility commodity where the energy management program is aimed at allowing the utility to manage demand for the commodity. As required by claim 1, the utility delivers the commodity to the customer site that has a plurality of commodity consuming devices. The energy management program includes a subset of the plurality of devices at the customer site for which usage of the commodity may be managed by the utility through the activation of the energy management program. Claim 1 allows the customer to

selectively subscribe to the energy management program. Thus, it is a choice of the customer as to whether the customer will subscribe to the energy management program.

Claim 1 further requires the delivery of the commodity to the subset devices and the measurement of the instantaneous rate at which the commodity is being delivered to the subset of devices. The instantaneous rate at which commodity is being delivered for each device within the subset is sent to the utility in real time. As described in the specification of the pending application, the delivery of the instantaneous rate of energy consumption to the utility, in real time, allows the utility to determine the amount of energy presently being consumed at the customer site, thus allowing the utility to make energy management decisions concerning the activation of the energy management program.

In rejecting claim 1, the Examiner relied solely upon the Ehlers '438 reference. The primary inventor of the Ehlers '438 reference is also the primary inventor of the pending application.

Initially, the Examiner stated that the Ehlers '438 reference taught a program that had a subset of the plurality of devices for which usage of the commodity may be curtailed by activating an energy management program. As evidence of the teaching in the Ehlers '438 reference, the Examiner referred to Col. 9, lines 9-10 and 51-53.

This portion of the Ehlers '438 reference simply states that the first microcomputer 18 and the second microcomputer 22 each include computer programs executing on the microprocessors that allow the microprocessors to carry out the functionality of a microcomputer. This teaching does not show or suggest defining an energy management program for use at the customer site where the energy management program has a subset of the plurality of devices at the customer site for which usage of the commodity may be managed by the utility by activating the energy management program, as required by claim 1. Instead, the Ehlers '438 reference just teaches a pair of microcomputers 18, 22 that carry out various software processes and communicate externally from the customer

premise through a communication interface unit 16. Nowhere in the Ehlers '438 reference is there any teaching or suggestion of defining an energy management program that includes a subset of devices at the customer site where the usage of the commodity by the subset of devices may be managed by activating the energy management program.

As required by claim 1, the method allows the customer to selectively subscribe to the energy management program such that the customer can determine whether or not they would like to participate in the defined energy management program. The Examiner stated that the Ehlers '438 reference taught this feature in Col. 32, line 57 to Col. 33, line 3. This portion of the patent specification is directed to the ability of the system of the Ehlers '438 patent to allow customers to select energy suppliers in an area that has multiple energy suppliers. According to the Ehlers '438 reference, a customer would receive changing energy rates from various energy suppliers such that the customer can select between different suppliers based upon the cost of energy. As described in the Ehlers '438 reference, the change in suppliers would typically be limited by contract terms, such that the customer would be able to change energy suppliers only at selected minimum intervals. When the utility receives an indication that the customer is changing utility companies, the utility obtains a remote meter reading from the customer's meter for use in billing the customer's account and crediting the original utility for the usage by the customer.

Clearly, the Ehlers '438 reference does not teach allowing a customer to selectively subscribe to an energy management program where the energy management program manages the commodity being consumed by a subset of devices contained at the customer site for the purpose of managing the amount of commodity consumed. Instead, the Ehlers '438 reference simply teaches the communication between the customer site and the utility where the customer is offered the ability, through the electronic communication, to select between different energy suppliers. Thus, the portion of the text cited by the Examiner clearly does not teach or suggest the subject matter of independent claim 1.

Further, no other portions of the Ehlers '438 reference teach the step of allowing the customer to selectively subscribe to the energy management program, as required by claim 1.

Claim 1 further requires the step of measuring the instantaneous rate at which the commodity is being delivered to the subset of devices and sending the instantaneous rate of commodity consumption for each device within the subset to the utility in real time. To show this limitation, the Examiner cited Col. 15, lines 5-8 of the Ehlers '438 reference.

In this portion of the Ehlers '438 reference, the reference teaches the ability of the first microcomputer 18 to communicate with the power company to receive real-time energy rate broadcasts, load shedding requests and the like, and to send to the utility company power outage reports, low voltage condition reports, customer usage reports and selected other data. Although this portion of the Ehlers '438 reference does teach the communication between the first microcomputer and the utility, it does not teach or suggest sending instantaneous consumption rate for each device within the subset to the utility in real time. The ability of the method of claim 1 to provide real time commodity utilization rates to the utility for each device within the subset allows the utility the ability to determine the amount of energy being consumed at the customer site by the devices within the subset defined by the energy management program. This information allows the utility to determine, in real time, the amount of energy that can be curtailed by activating the energy management program. This feature of the invention is not shown or suggested, nor rendered obvious, by the Ehlers '438 reference.

Based upon the above arguments for allowance, independent claim 1 is believed to be allowable over the Ehlers '438 reference cited by the Examiner.

Claims 2-3, 8-30 depend directly or indirectly from claim 1 and are thus believed to be allowable based upon the above arguments for allowance, as well as in view of the subject matter of each claim.

Dependent claim 2 further includes the limitation that the energy management program can be activated and at least one of a rate and a change in a rate at which the commodity is being delivered to the subset of devices is measured after the activation of the energy management program. The measurement of at least one of the rate and the change in rate after the energy management program has been activated allows the utility to determine whether the activation of the energy management program has caused the desired reduction in commodity consumption. In rejecting claim 2, the Examiner stated that this feature was taught by the Ehlers '438 reference in Col. 15, lines 5-8. However, as previously described, this portion of the Ehlers '438 reference does not provide any teaching or suggestion of measuring a rate or a change in the rate at which commodity is being delivered to a subset of devices after the activation of the energy management program, as required by claim 2. Instead, the Ehlers '438 reference simply states that customer usage reports and select other data can be communicated to the utility. This broad, general statement concerning the communication to the utility does not provide any teaching of the specifics required by claim 2. For at least this reason, claim 2 is believed to be allowable over the reference cited by the Examiner.

Dependent claim 13 further sets forth the steps of activating the energy management program and, once the energy management program has been activated, allowing the customer to selectively cancel the energy management program. These steps allow the customer to cancel the energy management program, thereby overriding the program and allowing the devices at the customer site to consume the commodity as desired rather than being limited by the energy management program. In rejecting claim 13, the Examiner cited Col. 32, line 57 to Col. 33, line 3. Again, this portion of the Ehlers '438 reference is directed to the ability of the customer to change energy suppliers and communicate this change to the utility company such that the utility company can bill the customer at the appropriate rate based upon the cost of commodity being supplied by the selected commodity supplier. This portion of the Ehlers '438 reference does not provide

any teaching or suggestion of allowing the customer to cancel an energy management program after the program has been activated, as required by claim 13.

Based upon the above arguments for allowance, claims 1-3, 8-30 are believed to be allowable over the Ehlers '438 reference cited by the Examiner in the Office Action. Such action is respectfully requested.

**Claims 33-35, 40-61**

Independent claim 33, like independent claim 1 described above, was rejected by the Examiner based upon the Ehlers '438 reference. By the present response, independent claim 30 has been amended to more particularly define over the Ehlers '438 reference cited by the Examiner. As amended, independent claim 30 is directed to a system for providing an energy management program to a customer of a utility where the energy management program is aimed at allowing the utility to manage demand for the commodity. The energy management program has a subset of the plurality of devices at the customer site for which usage of the commodity may be managed by activating the energy management program.

As described above in the arguments for allowance of independent claim 1, the Ehlers '438 reference does not teach or suggest a system that includes an energy management program aimed at allowing the utility to manage the demand for a commodity where the energy management program has a subset of the plurality of devices that consume the commodity at the customer site. As described, the portion of the Ehlers '438 reference cited by the Examiner (C. 9, L. 9-10, 51-53) is simply directed to computer programs that are resident on first and second microcomputers 18, 22. The Ehlers '438 reference does not teach any type of energy management program that includes a subset of devices that consume the commodity at the customer site.

Claim 33 further requires a user interface that allows the customer to selectively subscribe to the energy management program. Once again, as described above in the arguments for allowance of claim 1, the Ehlers '438 reference does not teach or suggest

any type of interface that allows the customer to selectively subscribe to the energy management program. Instead, the portion of the specification (C. 32, L. 57 – C. 33, L. 3) cited by the Examiner is directed to the ability of the system of the Ehlers '438 reference to allow a customer to select between various different utility providers each offering different energy rates. The Ehlers '438 reference does not teach or suggest, nor render obvious, a user interface that allows the customer to selectively subscribe to an energy management program, as required by claim 33.

Claim 33 further requires a node coupled to the subset of the devices for measuring the instantaneous rate at which the commodity is being delivered to the subset of devices and for sending the instantaneous rate for each device within the subset to the utility in real time. As discussed in the arguments for allowance of independent claim 1, although the Ehlers '438 reference does suggest communication between the utility and the first microcomputer 18, the Ehlers '438 reference does not teach measuring the instantaneous rate at which the commodity is being delivered to a subset of the devices at the customer site and delivering the instantaneous rate to the utility in real time. This ability of the system of claim 33 allows the utility to receive consumption information in real time such that the utility can selectively activate the energy management program to reduce commodity consumption based upon the rate of commodity consumption determined in real time.

Based upon the above arguments for allowance, independent claim 33 is believed to be in condition for allowance and such action is respectfully requested.

Claims 34-35 and 40-61 depend directly or indirectly from claim 33 and are thus believed to be allowable based upon the above arguments as well as in view of the subject matter of each of the claims.

Dependent claim 34 includes the limitation that the node is adapted to measure the rate at which the commodity is being delivered to the subset of devices after activation of the energy management program. As described above in the discussion of dependent

claim 2, this ability allows the utility to determine whether the activation of the energy management program has reduced the commodity consumption at the customer site. The Ehlers '438 reference does not teach or suggest, nor render obvious, this ability required by claim 34.

Dependent claim 35 further includes the limitation that the control system determines an actual rate of change in the rate of consumption induced by activation of the energy management program. As described in the arguments for allowance of dependent claim 3, this feature is not shown or taught, nor rendered obvious by the subject matter of the Ehlers '438 reference.

Claim 44, like claim 13, requires the user interface to allow the customer to selectively cancel the energy management program after the program has been activated. This ability is not shown or taught, nor rendered obvious, by the Ehlers '438 reference. In the portion of the Ehlers '438 reference cited by the Examiner, the reference teaches only the ability of the customer to select between multiple utility providers. The Ehlers '438 reference clearly does not teach the subject matter of dependent claim 44.

Based upon the above arguments for allowance and the claim amendments, claims 33-35 and 40-61 are believed to be in condition for allowance over the Ehlers '438 reference cited by the Examiner.

### **Conclusion**

Based upon the above arguments for allowance and the foregoing claim amendments, claims 1-3, 8-30, 33-35 and 40-61 are believed to be in condition for allowance. Further, based upon the allowability of independent claims 1 and 33, withdrawn claim 4-7 and 36-39 are also believed to be properly allowable in the present application.

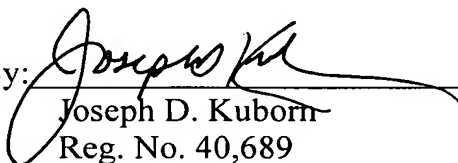


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The Examiner is invited to contact the applicants' undersigned attorney with any questions or comments, or to otherwise facilitate prosecution of the present application.

Respectfully submitted,

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